

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 93-0002 CSET  
Controlled Substance Excise Tax – Imposition  
For Tax Period: October 1992**

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**ISSUE**

**I. Controlled Substance Excise Tax — Imposition**

**Authority:** IC 6-7-3-5; IC 35-48-4-11; IC 6-8.1-5-1

Taxpayer protests the imposition of the controlled substance excise tax.

**STATEMENT OF FACTS**

According to police reports, on October 10, 1992, taxpayer and a second party were observed entering - with permission - the residence of another for the purpose of selling a quantity of marijuana. During the transaction, taxpayer was arrested for dealing and possessing marijuana. Following taxpayer's arrest, the Department assessed Indiana's controlled substance excise tax against taxpayer on 105 grams of marijuana. At the statutory rate of \$40.00 per gram, the base tax deficiency amounted to \$4,200.00. With the addition of the statutory 100% penalty, taxpayer's total liability came to \$8,400.00. Taxpayer protests this assessment.

**I. Controlled Substance Excise Tax – Imposition**

**DISCUSSION**

Taxpayer argues that the controlled substance excise tax was assessed in error because taxpayer did not possess, manufacture, or deliver any controlled substance.

Pursuant to IC 6-7-3-5:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered;
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C 841 through 21 U.S.C. 852. The tax does not apply to a controlled substance that is distributed, manufactured, or dispensed by a person registered under IC 35-48-3.

Possession of marijuana is defined in IC 35-48-4-11:

Section 11. A person who:

- (1) knowingly or intentionally possesses (pure or adulterated) marijuana, hash oil, or hashish;

commits possession of marijuana , hash oil, or hashish, a Class A misdemeanor.

Police observed taxpayer entering the putative purchaser's residence. Before the sales transaction could be completed, taxpayer was arrested as he was reaching into his right front coat pocket. Following the arrest, police recovered 105 grams of marijuana from taxpayer's coat pocket.

Taxpayer recites a different version. While taxpayer concedes that police discovered a quantity of marijuana in a coat pocket, taxpayer maintains that he was not wearing this coat. Rather, the coat lay on a couch. Furthermore, the coat belonged to someone else. Taxpayer reasons that since it was not his coat, his couch, or his house, he could not have been in possession of the marijuana. While taxpayer's argument is logically sound, taxpayer has failed to provide any evidence to support these assertions.

Pursuant to IC 6-8.1-5-1, the notice of proposed assessment is prima facie evidence that the Department's claim is valid. The burden of providing information rebutting this assessment rests with the taxpayer. Taxpayer, in this instance, has failed to meet his burden of proof.

### **FINDING**

The taxpayer's protest is denied.